

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

MARCUS HOWARD, )  
n/k/a Terrell Brown, )  
 )  
Petitioner )  
 )  
vs. ) CAUSE NO. 3:06-CV-50 RM  
 ) (Arising out of 3:01-CR-100(03)RM)  
 )  
UNITED STATES OF AMERICA, )  
 )  
Respondent. )

OPINION AND ORDER

On January 17, Terrell Brown filed a document with the court labeled: "Habeas Corpus Petition Pursuant to 28 USC § 451, et seq (1940)." For the following reasons, the court construes this document as a successive petition filed pursuant to 28 U.S.C. § 2255 and denies it for lack of jurisdiction.

Regardless of the caption, because Mr. Brown's motion asks the court set aside his conviction and sentence as unconstitutional, it is substantively within the scope of § 2255 petition. *See Melton v. U.S.*, 359 F.3d 855, 857 (7th Cir.2004) ("no matter what title the prisoner the prisoner plasters on the cover... it is substance that controls") *see also Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) ("Congress enacted 28 U.S.C. § 2255 to be the vehicle for collateral attacks on convictions and sentences for federal prisoners"). Thus, the court construes Mr. Brown's motion as successive petition filed under § 2255, and because he hasn't been granted leave to file a successive § 2255 petition by the court of

appeals, *see* 28 U.S.C. §§ 2244 and 2255, the court SUMMARILY DISMISSES it for want of jurisdiction [Doc. No. 141 on 3:01-CR-100; Doc. No. 1 on 3:06-CV-50].<sup>1</sup>

SO ORDERED.

Entered February 6, 2006

/s/ Robert L. Miller, Jr.  
Chief Judge  
United States District Court

cc: T. Brown/M. Howard  
AUSA/SB

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<sup>1</sup>Mr. Brown's first § 2255 petition was denied by the court's June 29, 2004 order [Doc. No. 123 on 3:91-CR-100; Doc. No. 2 on 3:03-CV-651].